

[First Reprint]

SENATE, No. 690

STATE OF NEW JERSEY

214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

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SYNOPSIS

“Garden State Film and Digital Media Jobs Act”; expands existing film and digital media production tax credit programs.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on December 20, 2010, with amendments.

(Sponsorship Updated As Of: 1/11/2011)

1 **AN ACT** expanding the existing film and digital media production
2 tax credit programs, and amending P.L.2005, c.345.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. Section 1 of P.L.2005, c.345 (C.54:10A-5.39) is amended to
8 read as follows:

9 1. a. A taxpayer, upon application to the Director of the
10 Division of Taxation in the Department of the Treasury and the
11 New Jersey Economic Development Authority, shall be allowed a
12 credit against the tax imposed pursuant to section 5 of P.L.1945,
13 c.162 (C.54:10A-5), in an amount equal to 20 percent of the
14 qualified film production expenses of the taxpayer during a
15 privilege period commencing after the effective date of P.L.2005,
16 c.345, provided that (1) at least 60 percent of the total film
17 production expenses, exclusive of post-production costs, of the
18 taxpayer will be incurred for services performed and goods used or
19 consumed in New Jersey, and (2) principal photography of the film
20 commences **[within]** the earlier of 180 days from the date of the
21 original application for the tax credit, or 150 days [after] from the
22 date of approval by the New Jersey Economic Development
23 Authority of the application for the credit.

24 The credit allowed against the tax imposed pursuant to section 5
25 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 22
26 percent for the qualified film production expenses of the taxpayer
27 during a privilege period that represent purchases of goods from a
28 qualified business located within an Urban Enterprise Zone, as
29 defined under P.L.1983, c.303 (C.52:27H-60 et seq.), or that
30 represent the purchase of services performed by a resident of an
31 Urban Enterprise Zone.

32 b. A taxpayer, upon application to the Director of the Division
33 of Taxation in the Department of the Treasury and the New Jersey
34 Economic Development Authority, shall be allowed a credit against
35 the tax imposed pursuant to section 5 of P.L.1945, c.162
36 (C.54:10A-5), in an amount up to 20 percent, as determined by the
37 authority of the qualified digital media content production expenses
38 of the taxpayer during a privilege period commencing after the
39 effective date of P.L.2007, c.257, provided that at least \$2,000,000
40 of the total digital media content production expenses of the
41 taxpayer will be incurred for services performed and goods used or
42 consumed in New Jersey and at least a significant percentage, as
43 determined by the authority, of the qualified digital media content
44 production expenses of the taxpayer will include wages and salaries

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted December 20, 2010.

1 paid to **one or more new** full-time or full-time equivalent
2 employees in New Jersey. For purposes of this subsection, "**new**
3 full-time or full-time equivalent employee" means a person
4 employed by the taxpayer for consideration for at least 35 hours a
5 week, or who renders any other standard of service generally
6 accepted by custom or practice as full-time or full-time equivalent
7 employment, whose wages are subject to withholding as provided in
8 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or
9 who is a partner of a taxpayer that is an eligible partnership, who
10 works for the partnership for at least 35 hours a week, or who
11 renders any other standard of service generally accepted by custom
12 or practice as full-time or full-time equivalent employment, and
13 whose distributive share of income, gain, loss, or deduction, or
14 whose guaranteed payments, or any combination thereof, is subject
15 to the payment of estimated taxes, as provided in the "New Jersey
16 Gross Income Tax Act," N.J.S.54A:1-1 et seq **., and who is**
17 **determined by the authority to work in a newly created permanent**
18 **position according to criteria it develops**. "**New full-time** Full-
19 time or full-time equivalent employee" shall not include any person
20 who works as an independent contractor or on a consulting basis for
21 the taxpayer. **In determining the amount of any grant of tax**
22 **credits made pursuant to this subsection, the authority shall consider**
23 **the number of new full-time positions created by the taxpayer as**
24 **well as the quality of the full-time positions created, including but**
25 **not limited to the salaries and benefits provided to new full-time**
26 **employees. The authority, in consultation with the Division of**
27 **Taxation, shall establish rules for the recapture of all, or a portion**
28 **of, the grant of tax credits pursuant to this subsection in the event**
29 **the taxpayer fails to maintain the new full-time positions that were**
30 **included in calculating the qualified digital media content**
31 **production expenses of the taxpayer.**】

32 The credit allowed against the tax imposed pursuant to section 5
33 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 22
34 percent for the qualified digital media content production expenses
35 of the taxpayer during a privilege period that represent purchases of
36 goods from a qualified business located within an Urban Enterprise
37 Zone, as defined under P.L.1983, c.303 (C.52:27H-60 et seq.), or
38 that represent the purchase of services performed by a resident of an
39 Urban Enterprise Zone.

40 c. The amount of the credit **applied** allowed under this
41 section against the tax imposed pursuant to section 5 of P.L.1945,
42 c.162, for a privilege period, when taken together with any other
43 credits allowed against the tax imposed pursuant to section 5 of
44 P.L.1945, c.162, shall not exceed 50 percent of the tax liability
45 otherwise due and shall not reduce the tax liability to an amount
46 less than the statutory minimum provided in subsection (e) of
47 section 5 of P.L.1945, c.162. The priority in which credits allowed

1 pursuant to this section and any other credits shall be taken shall be
2 as determined by the Director of the Division of Taxation. The
3 amount of the credit otherwise allowable under this section which
4 cannot be applied for the privilege period due to the limitations of
5 this subsection or under other provisions of P.L.1945, c.162 may be
6 carried over, if necessary, to the seven privilege periods following
7 the privilege period for which the credit was allowed.

8 d. A taxpayer may, with an application for a credit provided for
9 in subsection a. or subsection b. of this section, apply to the director
10 and the executive director of the authority for a tax credit transfer
11 certificate in lieu of the taxpayer being allowed any amount of the
12 credit against the tax liability of the taxpayer. The director and the
13 executive director of the authority may consult with the New Jersey
14 Motion Picture and Television Development Commission in
15 consideration of any application for approval of a tax credit or tax
16 credit transfer certificate under this section. The tax credit transfer
17 certificate, upon receipt thereof by the taxpayer from the director
18 and the authority, may be sold or assigned, in full or in part, to any
19 other taxpayer that may have a tax liability under P.L.1945, c.162
20 or N.J.S.54A:1-1 et seq., in exchange for private financial
21 assistance to be provided by the purchaser or assignee to the
22 taxpayer that has applied for and been granted the credit. The
23 certificate provided to the taxpayer shall include a statement
24 waiving the taxpayer's right to claim that amount of the credit
25 against the tax imposed pursuant to section 5 of P.L.1945, c.162
26 (C.54:10A-5) that the taxpayer has elected to sell or assign. The
27 sale or assignment of any amount of a tax credit transfer certificate
28 allowed under this section shall not be exchanged for consideration
29 received by the taxpayer of less than 75% of the transferred credit
30 amount. Any amount of a tax credit transfer certificate used by a
31 purchaser or assignee against a tax liability under P.L.1945, c.162
32 shall be subject to the same limitations and conditions that apply to
33 the use of a credit pursuant to subsection c. of this section. Any
34 amount of a tax credit transfer certificate obtained by a purchaser or
35 assignee under subsection a. of this section may be applied against
36 the purchaser's or assignee's tax liability under N.J.S.54A:1-1 et
37 seq. and shall be subject to the same limitations and conditions that
38 apply to the use of a credit pursuant to section 2 of P.L.2005, c.345
39 (C.54A:4-12).

40 e. As used in this section:

41 "Digital media content" means any data or information that is
42 produced in digital form, including data or information created in
43 analog form but reformatted in digital form, text, graphics,
44 photographs, animation, sound and video content. "Digital media
45 content" does not mean content offerings generated by the end user
46 (including postings on electronic bulletin boards and chat rooms);
47 content offerings comprised primarily of local news, events,

1 weather or local market reports; public service content; electronic
2 commerce platforms (such as retail and wholesale websites);
3 websites or content offerings that contain obscene material as
4 defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or
5 content that are produced or maintained primarily for private,
6 industrial, corporate or institutional purposes; or digital media
7 content acquired or licensed by the taxpayer for distribution or
8 incorporation into the taxpayer's digital media content.

9 "Film" means a feature film, a television series or a television
10 show of **[15]** 22 minutes or more in length, intended for a national
11 audience. "Film" shall not include a production featuring news,
12 current events, weather and market reports or public programming,
13 talk show, game show, sports event, award show or other gala
14 event, a production that solicits funds, a production containing
15 obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-
16 3, or a production primarily for private, industrial, corporate or
17 institutional purposes.

18 "Loan out company" means a personal service corporation that
19 employs an actor or actress who is hired by a film or digital media
20 production company.

21 "Qualified digital media content production expenses" means an
22 expense incurred in New Jersey for the production of digital media
23 content. Qualified digital media content production expenses shall
24 include but shall not be limited to wages and salaries of individuals
25 employed in the production of digital media content on which the
26 tax imposed by the "New Jersey Gross Income Tax Act,"
27 N.J.S.54A:1-1 et seq. has been paid or is due; the costs of computer
28 software and hardware, data processing, visualization technologies,
29 sound synchronization, editing, and the rental of facilities and
30 equipment. Qualified digital media content production expenses
31 shall not include expenses incurred in marketing, promotion or
32 advertising digital media or other costs not directly related to the
33 production of digital media content. Costs related to the acquisition
34 or licensing of digital media content by the taxpayer for distribution
35 or incorporation into the taxpayer's digital media content shall not
36 be qualified digital media content production expenses.

37 "Qualified film production expenses" means an expense incurred
38 in New Jersey for the production of a film including post-
39 production costs incurred in New Jersey. Qualified film production
40 expenses shall include but shall not be limited to wages and salaries
41 of individuals employed in the production of a film on which the
42 tax imposed by the "New Jersey Gross Income Tax Act,"
43 N.J.S.54A:1-1 et seq. has been paid or is due; the costs of
44 construction, operations, editing, photography, sound
45 synchronization, lighting, wardrobe and accessories and the cost of
46 rental of facilities and equipment. Qualified film production

1 expenses shall not include expenses incurred in marketing or
2 advertising a film.

3 "Total digital media content production expenses" means costs
4 for services performed and property used or consumed in the
5 production of digital media content.

6 "Total film production expenses" means costs for services
7 performed and tangible personal property used or consumed in the
8 production of a film.

9 "Post-production costs" means the costs of the phase of
10 production that follows principal photography, in which raw
11 footage is cut and assembled into a finished film with sound
12 synchronization and visual effects.

13 f. The Director of the Division of Taxation in the Department
14 of the Treasury, in consultation with the New Jersey Motion Picture
15 and Television Development Commission and the New Jersey
16 Economic Development Authority, shall adopt rules in accordance
17 with the "Administrative Procedure Act," P.L.1968, c.410
18 (C.52:14B-1 et seq.), as are necessary to implement this act
19 including examples of qualified film production and digital media
20 content production expenses, a requirement that an applicant submit
21 an agreed-upon procedures report prepared by an independent
22 certified public accountant to verify the tax credit claim, and the
23 procedures and forms to apply for a credit and for a tax credit
24 transfer certificate necessary for a taxpayer to sell or assign an
25 amount of tax credit under this section. The value of credits,
26 including tax credits allowed through the granting of tax credit
27 transfer certificates, approved by the director and the authority
28 pursuant to subsection a. of this section and pursuant to section 2 of
29 P.L.2005, c.345 (C.54A:4-12) shall not exceed a cumulative total of
30 \$10,000,000 in any fiscal year through fiscal year '~~2009~~' 2010 ,
31 and a cumulative total of \$50,000,000 in fiscal year '~~2010~~' 2012 '
32 and every fiscal year thereafter, to apply against the tax imposed
33 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and the tax
34 imposed pursuant to the "New Jersey Gross Income Tax Act,"
35 N.J.S.54A:1-1 et seq. If the cumulative total amount of credits and
36 tax credit transfer certificates allowed to taxpayers for privilege
37 periods or taxable years commencing during a single fiscal year
38 under subsection a. of this section and section 2 of P.L.2005, c.345
39 (C.54A:4-12) exceeds the amount of credits available in that year,
40 then taxpayers who have first applied for and have not been allowed
41 a credit or tax credit transfer certificate amount for that reason shall
42 be allowed, in the order in which they have submitted an
43 application, the amount of tax credit or certificate on the first day of
44 the next succeeding fiscal year in which tax credits and tax credit
45 transfer certificates under subsection a. of this section and section 2
46 of P.L.2005, c.345 (C.54A:4-12) are not in excess of the amount of
47 credits available. The value of credits, including tax credits allowed

1 through the granting of tax credit transfer certificates, approved by
2 the director and the authority pursuant to subsection b. of this
3 section shall not exceed a total of \$5,000,000 in any fiscal year
4 through fiscal year '[2009] 2010', and a cumulative total of
5 \$10,000,000 in fiscal year '[2010] 2012' and every fiscal year
6 thereafter, to apply against the tax imposed pursuant to section 5 of
7 P.L.1945, c.162 (C.54:10A-5). If the total amount of credits and
8 tax credit transfer certificates allowed to taxpayers for privilege
9 periods or taxable years commencing during a single fiscal year
10 under subsection b. of this section exceeds the amount of credits
11 available in that year, then taxpayers who have first applied for and
12 have not been allowed a credit or tax credit transfer certificate
13 amount for that reason shall be allowed, in the order in which they
14 have submitted an application, the amount of tax credit or
15 certificate on the first day of the next succeeding fiscal year in
16 which tax credits and tax credit transfer certificates under
17 subsection b. of this section are not in excess of the amount of
18 credits available. The Executive Director of the New Jersey
19 Economic Development Authority, in conjunction with the Director
20 of the Division of Taxation shall prepare and submit a report to the
21 Governor and the Legislature on the effectiveness of the credit as an
22 incentive for encouraging film productions and digital media
23 content productions to locate in New Jersey which shall be
24 completed before the third taxable year or privilege period in which
25 a credit may be claimed.

26 g. For the purpose of determining eligibility for or the amount
27 of any grant of tax credits pursuant to this section, the authority
28 shall not include any job that is included in the calculation of a
29 business employment incentive grant pursuant to the provisions of
30 P.L.1996, c.26 (C.34:1B-124 et al.) or a business retention and
31 relocation grant pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.).

32 h. Amounts of tax credits approved to a loan out company not
33 registered to do business in New Jersey shall be subject to New
34 Jersey gross income tax withholding at the applicable rate under the
35 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.
36 (cf: P.L.2007, c.257, s.1)

37
38 2. Section 2 of P.L.2005, c.345 (C.54A:4-12) is amended to
39 read as follows:

40 2. a. A taxpayer, upon application to the Director of the
41 Division of Taxation in the Department of the Treasury and the
42 New Jersey Economic Development Authority, shall be allowed a
43 credit against the tax otherwise due for the taxable year under the
44 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an
45 amount equal to 20 percent of the qualified film production
46 expenses of the taxpayer during a taxable year commencing after
47 the effective date of P.L.2005, c.345, provided that (1) at least 60

1 percent of the total production expenses, exclusive of post-
2 production costs, of the taxpayer will be incurred for services
3 performed and goods used or consumed in New Jersey, and (2)
4 principal photography of the film commences **[within]** the earlier
5 of 180 days from the date of the original application for the tax
6 credit, or 150 days **[after]** from the date of approval by the New
7 Jersey Economic Development Authority of the application for the
8 credit.

9 The credit allowed against the tax otherwise due under the "New
10 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an
11 amount equal to 22 percent for the qualified film production
12 expenses of the taxpayer during a privilege period that represent
13 purchases of goods from a qualified business located within an
14 Urban Enterprise Zone, as defined under P.L.1983, c.303
15 (C.52:27H-60 et seq.), or that represent the purchase of services
16 performed by a resident of an Urban Enterprise Zone.

17 b. The amount of the credit allowed pursuant to this section
18 shall be applied against the tax otherwise due under N.J.S.54A:1-1
19 et seq. after all other credits and payments. If the credit exceeds the
20 amount of tax otherwise due, that amount of excess shall be an
21 overpayment for the purposes of N.J.S.54A:9-7.

22 c. A taxpayer may, with an application for a credit provided for
23 in subsection a. of this section, apply to the director and the
24 executive director of the authority for a tax credit transfer certificate
25 in lieu of the taxpayer being allowed any amount of the credit
26 against the tax liability of the taxpayer. The director and the
27 executive director of the authority may consult with the New Jersey
28 Motion Picture and Television Development Commission in
29 consideration of any application for approval of a tax credit or tax
30 credit transfer certificate under this section. The tax credit transfer
31 certificate, upon receipt thereof by the taxpayer from the director
32 and the authority, may be sold or assigned, in full or in part, to any
33 other taxpayer that may have a tax liability under N.J.S.54A:1-1 et
34 seq. or P.L.1945, c.162 (C.54:10A-1 et seq.), in exchange for
35 private financial assistance to be provided by the purchaser or
36 assignee to the taxpayer that has applied for and been granted the
37 credit. The certificate provided to the taxpayer shall include a
38 statement waiving the taxpayer's right to claim that amount of the
39 credit against the tax imposed pursuant to N.J.S.54A:1-1 et seq.,
40 that the taxpayer has elected to sell or assign. The sale or
41 assignment of any amount of a tax credit transfer certificate allowed
42 under this section shall not be exchanged for consideration received
43 by the taxpayer of less than 75% of the transferred credit amount.
44 Any amount of a tax credit transfer certificate used by a purchaser
45 or assignee against a tax liability under N.J.S.54A:1-1 et seq., shall
46 be subject to the same limitations and conditions that apply to the
47 use of a credit pursuant to subsection b. of this section. Any amount

1 of a tax credit transfer certificate obtained by a purchaser or
2 assignee under this section may be applied against the purchaser's
3 or assignee's tax liability under P.L.1945, c.162 and shall be subject
4 to the same limitations and conditions that apply to the use of a
5 credit pursuant to section 1 of P.L.2005, c.345 (C.54:10A-5.39).

6 d. A partnership shall not be allowed a credit under this section
7 directly, but the amount of credit or tax credit transfer certificate of
8 a taxpayer in respect of a distributive share of partnership income
9 under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
10 seq., shall be determined by allocating to the taxpayer that
11 proportion of the credit or certificate acquired by the partnership
12 that is equal to the taxpayer's share, whether or not distributed, of
13 the total distributive income or gain of the partnership for its
14 taxable year ending within or with the taxpayer's taxable year. For
15 the purposes of subsection b. of this section, the amount of tax
16 liability that would be otherwise due of a taxpayer is that proportion
17 of the total liability of the taxpayer that the taxpayer's share of the
18 partnership income or gain included in gross income bears to the
19 total gross income of the taxpayer. The provisions of subsection c.
20 of this section shall apply to the amount of any credit or certificate
21 of a taxpayer in respect of a distributive share of partnership
22 income.

23 e. As used in this section:

24 "Film" means a feature film, a television series or a television
25 show of [15] 22 minutes or more in length, intended for a national
26 audience. "Film" shall not include a production featuring news,
27 current events, weather and market reports or public programming,
28 talk show, game show, sports event, award show or other gala
29 event, a production that solicits funds, a production containing
30 obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-
31 3, or a production primarily for private, industrial, corporate or
32 institutional purposes.

33 "Loan out company" means a personal service corporation that
34 employs an actor or actress who is hired by a film or digital media
35 production company.

36 "Qualified film production expenses" means an expense incurred
37 in New Jersey for the production of a film including post-
38 production costs incurred in New Jersey. Qualified film production
39 expenses shall include but shall not be limited to wages and salaries
40 of individuals employed in the production of a film on which the
41 tax imposed by the "New Jersey Gross Income Tax Act,"
42 N.J.S.54A:1-1 et seq. has been paid or is due; the costs
43 of construction, operations, editing, photography, sound
44 synchronization, lighting, wardrobe and accessories and the cost of
45 rental of facilities and equipment. Qualified film production
46 expenses shall not include expenses incurred in marketing or
47 advertising a film.

1 "Total film production expenses" means costs for services
2 performed and tangible personal property used or consumed in the
3 production of a film.

4 "Post production costs" means the costs of the phase of
5 production that follows principal photography, in which raw
6 footage is cut and assembled into a finished film with sound
7 synchronization and visual effects.

8 f. The Director of the Division of Taxation in the Department
9 of the Treasury, in consultation with the New Jersey Motion Picture
10 and Television Development Commission and the New Jersey
11 Economic Development Authority, shall adopt rules in accordance
12 with the "Administrative Procedure Act," P.L.1968, c.410
13 (C.52:14B-1 et seq.), as are necessary to implement this act
14 including examples of qualified film production expenses, a
15 requirement that an applicant submit an agreed-upon procedures
16 report prepared by an independent certified public accountant to
17 verify the tax credit claim, and the procedures and forms to apply
18 for a credit and for a tax credit transfer certificate necessary for a
19 taxpayer to sell or assign an amount of tax credit under this section.
20 The amount of credits, including tax credits allowed through the
21 granting of tax credit transfer certificates, approved by the director
22 and the authority pursuant to subsection a. of this section and
23 pursuant to section 1 of P.L.2005, c.345 (C.54:10A-5.39) shall not
24 exceed a cumulative total of \$10,000,000 in any fiscal year through
25 fiscal year '[2009] 2010', and a cumulative total of \$50,000,000 in
26 fiscal year '[2010] 2012' and every fiscal year thereafter, to apply
27 against the tax imposed under N.J.S.54A:1-1 et seq., and the tax
28 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). If
29 the cumulative total amount of credits and tax credit transfer
30 certificates allowed to taxpayers for taxable years or privilege
31 periods commencing during a single fiscal year under this section
32 and subsection a. of section 1 of P.L.2005, c.345 (C.54:10A-5.39)
33 exceeds the amount of credits available in that year, then taxpayers
34 who have first applied for and have not been allowed a credit or tax
35 credit transfer certificate amount for that reason shall be allowed, in
36 the order in which they have submitted an application, the amount
37 of tax credit or certificate on the first day of the next succeeding
38 fiscal year in which tax credits and tax transfer certificates under
39 this section and subsection a. of section 1 are not in excess of the
40 amount of credits available. The Executive Director of the New
41 Jersey Economic Development Authority, in conjunction with the
42 Director of the Division of Taxation shall prepare and submit a
43 report to the Governor and the Legislature on the effectiveness of
44 the credit as an incentive for encouraging film productions to locate
45 in New Jersey which shall be completed before the third taxable
46 year or privilege period in which a credit may be claimed.

1 g. Amounts of tax credits approved to a loan out company not
2 registered to do business in New Jersey shall be subject to New
3 Jersey gross income tax withholding at the applicable rate under the
4 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.
5 (cf: P.L.2007, c.257, s.2)
6

7 3. This act shall take effect immediately '【and shall apply to
8 fiscal years beginning after enactment】'.